

The Honorable Benjamin Settle

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

CLYDE RAY SPENCER, MATTHEW
RAY SPENCER, and KATHRYN E.
TETZ,

Plaintiffs,

v.

FORMER DEPUTY PROSECUTING
ATTORNEY FOR CLARK COUNTY
JAMES M. PETERS, DETECTIVE
SHARON KRAUSE, SERGEANT
MICHAEL DAVIDSON, CLARK
COUNTY PROSECUTOR'S OFFICE,
CLARK COUNTY SHERIFF'S
OFFICE, THE COUNTY OF CLARK
and JOHN DOES ONE THROUGH
TEN,

Defendants.

NO. C11-5424BHS

DECLARATION IN OPPOSITION TO
NOTICE OF FILING PAPER
MATERIALS WITH THE CLERK
AND IN OPPOSITION TO
PLAINTIFF'S MOTION FOR LEAVE
TO SUPPLEMENT THE RECORD,
INSTANTER

I, Patricia C. Fetterly, make the following declaration under penalty of perjury:

On October 29, 2012 plaintiff's counsel filed a notice of filing paper materials with the clerk and motion for leave to supplement the record. (Dkt. Nos. 94 and 96). In this motion plaintiff seeks leave of court to file a copy of a videotape of an interview conducted by defendant James Peters with former plaintiff Kathryn Spencer, now Kathryn Tetz, that took place on December 11, 1984. Plaintiff supports this motion with a declaration from plaintiff's counsel Douglas H. Johnson (Dkt. No. 95). Attached as Exhibit 1 to this declaration is a document described by Mr. Johnson as a transcript of this videotaped interview. By order dated November

DECLARATION IN OPPOSITION TO
NOTICE OF FILING PAPER
MATERIALS WITH THE CLERK AND
IN OPPOSITION TO PLAINTIFF'S
MOTION FOR LEAVE TO
SUPPLEMENT THE RECORD,
INSTANTER

1

ATTORNEY GENERAL OF WASHINGTON
Torts Division
7141 Cleanwater Drive SW
P.O. Box 40126
Olympia, WA 98504-0126
(360) 586-6300

1 6, 2012 this court permitted supplementation of the record with the videotape for future reference
 2 by the court.

3 Defendant Peters does not object to the supplementation of the record with a copy of the
 4 videotape. However, defendant Peters does object to supplementation of the record with the
 5 transcript attached to the Declaration of Mr. Johnson for the reasons set forth in this declaration.
 6

7 I have personally viewed a copy of the above referenced video tape and have reviewed the
 8 so called transcription plaintiff seek to file with the court attached to the Declaration of Douglas
 9 H. Johnson (Dkt. No. 95, Exhibit 1). The transcription offered by plaintiff's counsel is not an
 10 accurate transcription because it does not record the non-verbal responses of Kathryn Spencer to
 11 questions asked by Mr. Peters. Many of Kathryn Spencer's responses to the questions posed by
 12 Mr. Peters involved non-verbal responses (such as nodding or shaking of her head) as opposed to
 13 verbal responses. During many portions of the tape she demonstrated certain activities in
 14 response to questions asked by placing dolls that were being used in the interview in certain ways
 15 and in certain locations. The transcription offered by Mr. Johnson may contain other inaccuracies
 16 as well. Most importantly the transcription was made by plaintiff's counsel or their designate and
 17 was not prepared by a licensed court reporter with no interest in the outcome of this lawsuit.
 18

19 I have asked that the Clark County Prosecuting Attorney's Office, who has custody of the
 20 original VHS tape, forward the original video tape to Joni Novak, a licensed court reporter, who
 21 will prepare an accurate transcription of the videotape. A copy of my letter asking the Clark
 22 County Prosecuting Attorney to forward the VSH tape to Ms. Novak is attached hereto as Exhibit
 23 A. For the reasons stated in this declaration the record in this case should only be supplemented
 24
 25
 26

1 with a transcription of the tape prepared by a licensed court reporter, not a transcript prepared by
2 counsel for either party.

3 Signed under penalty of perjury this 9 day of November 2012.
4

5 
6 PATRICIA C. FETTERLY, WSBA No. 8425
7 Assistant Attorney General

8 Attorney General's Office
9 P.O. Box 40126
10 Olympia, WA 98504-0116
11 Telephone: (360) 586-6300
12 Fax: (360) 586-6655
13 E-mail: PatriciaF1@atg.wa.gov
14 Attorneys for Defendant Peters
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on this 9th of November, 2012, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Plaintiffs attorney:

Plaintiffs' Attorneys:

dandavies@dwt.com
kathleen.zellner@gmail.com
dhjohnson43@aol.com

AND TO

Attorney for Co-Defendants Krause, Clark Co. Sheriff's Office, Clark Co. Prosecutor's Office:

Bernard.veljacic@clark.wa.gov
western@wscd.com
gbogdanovich@lldkb.com
jefff@fjtlaw.com

By: s/Patricia C. Fetterly
PATRICIA C. FETTERLY, WSBA No. 8425
Assistant Attorney General
DANIEL J. JUDGE, WSBA No. 17392
Senior Counsel
Attorney General's Office
P.O. Box 40126
Olympia, WA 98504-0116
Telephone: (360) 586-6300
Fax: (360) 586-6655
E-mail: PatriciaF1@atg.wa.gov
Attorneys for Defendant Peters

DECLARATION IN OPPOSITION TO
NOTICE OF FILING PAPER
MATERIALS WITH THE CLERK AND
IN OPPOSITION TO PLAINTIFF'S
MOTION FOR LEAVE TO
SUPPLEMENT THE RECORD,
INSTANTER



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON

Torts Division

7141 Cleanwater Dr SW • PO Box 40126 • Olympia WA 98504-0126

November 9, 2012

Bernard Veljacic
Clark County Prosecuting Attorney
Civil Division
P.O. Box 5000
Vancouver, WA 98666-5000

RE: *Spencer v. James M. Peters, et al.*
United States District Court Cause No. 3:11-CV-5424BHS

Dear Mr. Veljacic:

This follows our telephone conversation of earlier today in which I requested that you forward the original VHS video tape in the possession of your office concerning the December 11, 1984 interview of Kathryn Spencer by James Peters to Joni Novak CCR for transcription. Ms. Novak will return the tape to your office once she has completed her transcription. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, reading "Patricia C. Fetterly".

PATRICIA C. FETTERLY
Assistant Attorney General
(360) 586-6300

PCF:ld

cc: Guy M. Bogdanovich
Jeffrey Freimund
Daniel T. Davies
Kathleen T. Zellner
Joni Novak, CCR

EXHIBIT 1

5
COPY